

## **REMARKS/ARGUMENTS**

Responsive to the Office Action mailed July 12, 2005:

### **I. PRIOR ART MATTERS**

- A. The Office Action rejected claims 1 and 5 under 35 USC 102(b) as being anticipated by Mentor. Applicant respectfully traverses this rejection.

A single prior art reference anticipates a claimed invention only if it discloses each and every claim element.<sup>1</sup>

As to claims 1 and 5, Mentor does not disclose a scent dispenser for attracting game and for dipping into a scent container having a rim. Mentor discloses a burner for a liquid fuel cell. Furthermore, Mentor does not disclose an aperture through the absorbent member for suspending the absorbent member.

Claims 1 and 5 are therefore allowable.

- B. The Office Action rejected claims 3-4 under 35 USC 103(a) as being unpatentable over Regan in view of Holtkamp. Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.<sup>2</sup> If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.<sup>3</sup>

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

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<sup>1</sup> *Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984)

<sup>2</sup> MPEP Sec. 2142.

<sup>3</sup> *Id.*

expectation of success must both be found in the prior art, and not based on applicant's disclosure.<sup>4</sup>

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

The references do not teach or suggest all the claim limitations.

As to amended claim 3, the references do not disclose:

“(a) dipping a scent dispenser into a scent container, the scent dispenser absorbing scent from the scent container, wherein the scent dispenser has a pair of legs with a gap therebetween, and wherein each leg is inserted into the scent container with the rim of the container entering the gap.”

The watering wick of Holtkamp has only one leg 44. There is no disclosure of a second leg. There would be no need to have a second leg as claimed, as Holtkamp states that the bottom or tail section 44 extends downwardly from the pot opening into the water supply or reservoir. Col. 2 lines 1-6. There is no disclosure of the need to have a wick with two legs to alternately enter a container with the rim of the container passing between the legs. Because the size of the opening of the water supply or reservoir is not specified, it is possible, even if a second leg were provided, that both legs could be simultaneously inserted into the water supply or reservoir. In contrast, a stated problem that the invention is addressing is the need to be able to use a container with a mouth that is narrower than the scent dispenser.

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Holtkamp is non-analogous prior art. To rely on a reference under 35 USC 103, it must be prior art.<sup>5</sup> "In order to rely on a reference as the basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor is concerned."<sup>6</sup>

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals,

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<sup>4</sup>Id. (emphasis supplied)

<sup>5</sup> MPEP 2141.01(a)

<sup>6</sup> id.

logically would have commended itself to an inventor's attention in considering his problem."<sup>7</sup>

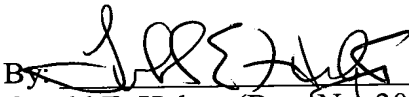
Holtkamp is clearly not in the field of Applicant's endeavor.

Furthermore, Holtkamp is not reasonably pertinent to the particular problem with which the inventor was concerned. Applicant was concerned with the problem of dispensing an animal scent from a container Holtkamp is concerned with the problem of watering a potted plant. There is no way that Holtkamp would have come to Applicant's attention in considering his problem.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

Dated: 11 05 05

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<sup>7</sup> id. (citing *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) (emphasis supplied))